

BEFORE THE TENNESSEE EMERGENCY COMMUNICATIONS BOARD

Nashville, Tennessee

February 6, 2004

IN RE: RESOLUTION OF THE JACKSON COUNTY EMERGENCY COMMUNICATIONS DISTRICT REQUESTING A DECLARATION OF FINANCIAL DISTRESS AND REMEDIAL ACTION

ORDER GRANTING IN PART AND DENYING IN PART REQUESTED RELIEF

This matter came before the Tennessee Emergency Communications Board ("Board" or "TECD") during a properly noticed meeting convened on January 21, 2004 pursuant to Tenn. Code Ann. § 8-44-108(b) to consider a Resolution passed during an emergency meeting of the Jackson County Emergency Communications District ("JCECD") on January 19, 2004.

Background

On Monday, January 19, 2004, the JCECD held an emergency meeting to address newly discovered financial shortfalls including, among other things, a default on a bank loan, a number of checks returned for insufficient funds, a probable inability to meet the next payroll and a notice of possible lien on JCECD assets by the Internal Revenue Service. The JCECD learned of the dire financial condition of the District after the resignation of its Director.

During the meeting, the JCECD voted to seek assistance from the TECB. Specifically, the JCECD passed a resolution (attached hereto as Exhibit A) requesting that the TECB (1) declare that the JCECD is "financially distressed" within the meaning of Tenn. Code Ann. § 7-86-304(d) and (2) take such remedial action as may be necessary and appropriate.

The January 21, 2004 Meeting of the TECB

The TECB convened the January 21, 2004 telephonic meeting in order to respond to the ECD's resolution seeking TECB assistance.¹ A quorum of the Board was not physically present at the location from which the teleconference originated, although a quorum participated electronically. The meeting was open to the public and was audible at the location stated in the Notice. Each member of the Board participating telephonically was able to simultaneously hear and be heard during the meeting. Members participating telephonically and the persons participating telephonically from the location in which the

¹ Prior to the meeting, the TECB fully complied with the notice requirements of Tenn. Code Ann. § 8-44-108(c).

members participated were identified in the minutes.² Members participating by telephone were provided with all documents that were discussed during the meeting.

As required by Tenn. Code Ann. § 8-44-108(b), at the beginning of the meeting, the TECB determined that a necessity existed which justified the meeting in the absence of a physical quorum.³ The TECB's unanimous determination of necessity was based upon the facts stated herein as Background, which were included in the minutes of the meeting. All votes taken during this meeting were by roll call.

During the meeting, the TECB addressed the JCECD's request to be declared "financially distressed" within the meaning of Tenn. Code Ann. § 7-86-304. Tenn. Code Ann. § 7-86-304 states in pertinent part:

(d) (1) Any emergency communications district that is a financially distressed emergency communications district shall be subject to the supervision and evaluation of the board. For the purposes of this chapter, a "financially distressed emergency communications district" is a district, which, as shown by the annual audits:

Fails to produce revenues sufficient to provide for all expenses and maintenance of the district, including reserves thereof, for a period of three (3) consecutive years;

Has a deficit retained earnings balance; or

Is in default on any indebtedness.

(2) After reviewing the financial statements and operations of any financially distressed emergency communications district, and after holding a public hearing within such district's service area, the board may prescribe a rate structure, up to the maximum established pursuant to § 7-86-108(a)(2)(A), to be adopted by the district, as may be necessary to cause the district to liquidate in an orderly fashion any retained earnings deficits, to cure a default on any indebtedness of the district, and/or to remedy the failure of the district to produce revenues sufficient to provide for all expenses and maintenance of the district, including reserves.

² Individuals participating in the meeting who were not affiliated with the Board included Jim Morgan, Mickey Smith and Jeff Allen, affiliates of the JCECD, Rex Hollaway, technical consultant to the TECB, and Buddy Shaffer, President of the Tennessee Emergency Numbering Association.

³ Under Tenn. Code Ann. § 8-44-108(a)(3), necessity "means the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary."

After considering the requisites of Tenn. Code Ann. § 7-86-304(d), the Board determined that the JCECD is not “financially distressed” because the statutory requirement that the evidence of distress (*i.e.*, insufficient revenues for three years, a deficit retained earnings balance or default on indebtedness) be established through review of the “annual audits” was not satisfied. The annual audits the Board has received on Jackson County are from July 1, 2002 to June 30, 2003. These annual audits show a net loss, but do not provide evidence of any of the statutory criteria necessary to establish financial distress. It was noted during the meeting that the remedy of a rate increase to provide assistance is unavailable because the JCECD received an increase to the statutory maximum in 2001.

In recognition that, notwithstanding the requisites of Tenn. Code Ann. § 7-86-304(d), the JCECD is facing potentially disastrous financial problems that could affect its capacity to provide emergency communications to its citizens, the Board then considered other legal options. The Board unanimously determined that in this unique circumstance, where the Board was asked to take remedial action by an ECD, the emergency telephone service fee had already been increased to the statutory maximum and the ECD is facing financial problems of such import that the safety of its citizens could be affected, it was appropriate to invoke Tenn. Code Ann. § 7-86-306(a)(13) in order to exercise jurisdiction over this matter. Tenn. Code Ann. § 7-86-306(a)(13) states:

- (a) In order to effectuate the purposes of this part, the board has the power and authority to: . . .
- (13) Exercise all the powers and take all the actions necessary, proper, or enumerated herein.

Tenn. Code Ann. § 7-86-302(a) defines the Board’s purpose as: “assisting emergency communications district boards of directors in the area of management, operations, and accountability, and establishing emergency communications for all citizens of the state.” To effectuate that purpose, the Emergency Communications Act authorizes the Board to provide such assistance by, among other things, “respond[ing] to requests from emergency communications districts . . . , and subject to availability of funds, review[ing] and approve[ing] requests for reimbursements for expenditures to implement, operate, maintain, or enhance statewide wireless enhanced 911 service”⁴

To that end, the TECB issued the following directives to the Board of the JCECD. In exchange for compliance with these directives, the Board agreed to provide financial assistance through the use of reimbursements and grants as stated below. The TECB:

- Directed the Board of the JCECD to request David Sturdivant of the County Audit Division of the Office of the Comptroller to conduct the emergency external audit requested by the ECD at its January 19, 2004 emergency board meeting;
- Directed the Board of the JCECD to provide the TECB with a copy of the report of the Emergency External Auditor, if such audit is approved, immediately upon availability;
- Directed the JCECD to request Twin Lakes Telephone Cooperative Corporation to provide an audit of the telephone lines it supplied for the provision of exchange

⁴ Tenn. Code Ann. § 7-86-306(a)(10).

telephone service in Jackson County from January 1, 2003 to the present to determine whether the correct amounts have been charged as the emergency telephone service charge; such audit shall be completed within ten (10) days from the issuance of this Order;

Directed the JCECD to provide the TECB with a copy of such audit immediately upon availability;

- Authorized TECB staff to reimburse the JCECD for the costs of the emergency external audit and the audit conducted by Twin Lakes Telephone Cooperative Corporation;
- Directed the JCECD to provide Twin Lakes Telephone Cooperative Corporation with the necessary authorization to allow TECB staff access to records and information in its possession relevant to the JCECD's financial status;
- Directed the JCECD to seek commitments from Jackson County and any municipalities within Jackson County for contributions to the JCECD;
- Directed the JCECD to inform Jackson County and all appropriate municipalities within Jackson County that the JCECD will no longer pay for National Crime Information Center ("NCIC") services because NCIC is not an emergency communications service within the meaning of Tenn. Code Ann. § 7-86-103(10);
- Directed TECB staff to reimburse the ECD for its payroll expenditures incurred from January 1, 2004; such reimbursement shall be discontinued as soon as possible, contingent upon a finding by TECB staff that the JCECD has achieved sufficient financial stability to continue operations without such reimbursement, and, in any event, shall continue no later than June 30, 2004;
- Directed TECB staff to reimburse the JCECD for up to \$50,000 in emergency communications equipment expenses;

Authorized TECB staff to reimburse the ECD for up to \$80,000 in audited expenditures that are presently in default that were used to implement, maintain, operate or enhance the ECD's wireless E911 service;

- Directed the JCECD to email weekly reports on all financial transactions entered into and obligations incurred by the JCECD to the TECB Auditor until otherwise notified by the TECB;
- Directed the JCECD to request permission from the TECB Executive Director before expending any ECD funds over the amount of \$500 until otherwise notified by the TECB;
- Directed the JCECD to determine whether the Internal Revenue Service ("IRS") has filed a lien against the JCECD and report the results of this inquiry to the TECB Executive Director within five (5) days of the issuance of this directive;
- Directed the JCECD to contact the office of its representative in Congress within five (5) days of the issuance of this directive to seek assistance in negotiating with the IRS regarding the JCECD's debt to the IRS, particularly with regard to reducing or eliminating interest and late fees;
- Directed the JCECD to contact the County Mayor within five (5) days of the issuance of this directive for assistance in negotiating with the office of its representative to Congress and the IRS regarding same;
- Directed the JCECD to inquire of the Internal Revenue Service regarding a payment plan within five (5) days of this meeting and report the results of the inquiry to the TECB Executive Director within five (5) days of the inquiry.

- Directed the TECB Executive Director to take the necessary steps to amend the TECB Rural Dispatcher Grant so that payments are not limited solely to the salaries of "additional dispatchers."

The February 5, 2004 Meeting of the District Board

On February 5, 2004, the JCECD entered into a Consent Order, attached hereto as Exhibit B. The Consent Order memorialized the conditions set by the TECB to which the JCECD would be required to agree to accomplish in order to receive the relief offered.

IT IS HEREBY ORDERED THAT:

1. The request of the Jackson County Emergency Communications District to be declared "financially distressed" within the meaning of Tenn. Code Ann. § 7-86-304(d) is denied.

2. The request of the Jackson County Emergency Communications District that the Tennessee Emergency Communications Board take such remedial action as may be necessary and appropriate to assist in overcoming the dire financial situation faced by such District is granted pursuant to Tenn. Code Ann. § 7-86-306(a)(13), contingent upon the consent of the Jackson County Emergency Communications District as stated above.

This 6th day of February, 2004.

Randy Porter
Randy Porter, Chairman *w/ permission RL*

Jerry Sharber
Jerry Sharber, Vice Chairman *w/ permission RL*

Charles B. Ibrey
Charles B. Ibrey, Board Member *w/ permission RL*

Ike Lowery
Ike Lowery, Board Member *w/ permission RL*

Freddie Rich
Freddie Rich, Board Member *w/ permission RL*

Wanda Moody
Wanda Moody, Board Member

cf permission def

David Purkey
David Purkey, Board Member

cf permission def

* * * *

Shelby Sheffield, Esq., Board Member⁵

* * * *

Johnny Vickers, Board Member⁶

⁵ Ms. Sheffield recused herself from participation in this matter. See Exhibit C attached hereto.

⁶ Mr. Vickers did not participate in the meeting.

**JACKSON COUNTY
9-1-1 EMERGENCY COMMUNICATIONS DISTRICT
BOARD OF DIRECTORS**

RESOLUTION: A RESOLUTION TO REQUEST THE TENNESSEE EMERGENCY COMMUNICATIONS BOARD ("ECB") TO DECLARE THAT THE JACKSON COUNTY 9-1-1 EMERGENCY COMMUNICATIONS DISTRICT ("the District") IS "FINANCIALLY DISTRESSED," AS DEFINED BY T.C.A. 7-86-304, AND TO TAKE SUCH REMEDIAL ACTION(S) AS MAY BE NECESSARY AND APPROPRIATE.

WHEREAS, for reasons previously concealed and unknown to the District Board of Directors ("the Board"), the District incurred a substantial operating deficit in the fiscal year ending June 30, 2003, has a deficit retained earnings balance, and is in default on loans incurred to purchase 'public safety answering point' (PSAP) equipment essential to the enhanced 9-1-1 (E-911) system upon which Jackson County citizens depend; and,

WHEREAS, the District official primarily responsible for the financial management of the District has resigned, effective January 15, 2004; and,

WHEREAS, the District confronts an emergency and is a "financially distressed" District, as defined in Tennessee Code Annotated, Section 7-86-304, which status is hereby acknowledged; and,

WHEREAS, it is imperative that the fiscal status of the District be forthwith reported to the ECB and that this status be confirmed, and that any requirements of public hearing be waived so as not to delay ECB response, and that the ECB be requested to immediately intervene and take such remedial actions as the ECB may determine necessary and appropriate;

NOW, THEREFORE, BE IT RESOLVED BY THIS DISTRICT BOARD, IN SPECIAL SESSION ASSEMBLED:

1. That, based upon the purposes stated, we do hereby declare and find that the District is "financially distressed," as defined by the statute cited; and,
2. That we do hereby request the ECB, acting through the ECB Executive Director, to take such remedial actions as the law may allow and the ECB may determine necessary and appropriate; and,
3. That we do hereby authorize the Acting Executive Director and Board Chairman, acting jointly, to take such actions as are deemed necessary and appropriate, subject to the review and concurrence of Counsel; and,

Received by the

JAN 20 2004

Exhibit A

TN Emergency
Communications Board

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM &
AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

APPROVED: 
Board Chairman

CERTIFIED: 
Board Secretary

DATE: January 19, 2004

Received by the

JAN 20 2004

TN Emergency
Communications Board

BEFORE THE TENNESSEE EMERGENCY COMMUNICATIONS BOARD

Nashville, Tennessee

**IN RE: RESOLUTION OF THE JACKSON COUNTY EMERGENCY
COMMUNICATIONS DISTRICT REQUESTING A DECLARATION OF
FINANCIAL DISTRESS AND REMEDIAL ACTION**

CONSENT ORDER

WHEREAS, Jackson County Emergency Communications District ("District"), for the purpose of entering into this Consent Order and for the purpose of obtaining such remedial action as the Tennessee Emergency Communications Board may deem necessary and appropriate to assist in moderating the serious financial situation faced by such District, as requested in the Resolution passed by the District Board during an emergency meeting on January 19, 2004, agrees to the following:

The Jackson County Emergency Communications District hereby agrees to:

1. Within five (5) days from the date the District executes this Consent Order, request the County Audit Division of the Office of the Comptroller to conduct an emergency external audit; and provide the Tennessee Emergency Communications Board with a copy of such audit report immediately upon availability;
2. Within five (5) days from the date the District executes this Consent Order, request Twin Lakes Telephone Cooperative Corporation to provide an audit of the telephone lines it supplied for the provision of exchange telephone service in Jackson County from January 1, 2003 to the present to determine whether the correct amounts have been charged as the emergency telephone service charge, with such audit to be completed within ten (10) days from the issuance of this Order; and provide the Tennessee Emergency Communications Board with a copy of such audit immediately upon availability;
3. Within five (5) days from the date the District executes this Consent Order, provide Twin Lakes Telephone Cooperative Corporation with the necessary authorization to allow staff of the Tennessee Emergency Communications Board access to records and information in its possession relevant to the Jackson County Emergency Communications District's financial status;
4. Within five (5) days from the date the District executes this Consent Order, contact Jackson County and all municipalities within Jackson County to seek financial contributions to the Jackson County Emergency Communications District, to be documented in interlocal agreements;
5. Within five (5) days from the date the District executes this Consent Order, inform Jackson County and all appropriate municipalities within Jackson

- County that the District will no longer pay for National Crime Information Center services;
6. Beginning no later than seven (7) days from the date the District executes this Consent Order, email weekly reports on all financial transactions entered into and obligations incurred by the Jackson County Emergency Communications District to the Auditor of the Tennessee Emergency Communications Board until otherwise notified;
 7. Beginning on the date the District executes this Consent Order, request permission from the Executive Director of the Tennessee Emergency Communications Board before expending any ECD funds over the amount of \$500 until otherwise notified;
 8. Within five (5) days from the date the District executes this Consent Order, contact the Internal Revenue Service (IRS) to determine (a) whether an IRS lien has been filed against the District, (b) the amount of the debt owed by the District to the IRS and (c) whether a payment plan can be established; report the results of this inquiry to the Executive Director of the Tennessee Emergency Communications Board within five (5) days of the date the District executes this Consent Order;
 9. Within five (5) days of the date the District executes this Consent Order, contact the office of the District's representative in Congress and the Office of the Jackson County Mayor to request assistance in negotiating payment of the District's debt to the IRS, particularly with regard to reducing or eliminating interest and late fees;

It is expressly understood that this Consent Order is subject to the Board's acceptance and has no force or effect until an Order based upon and incorporating the Consent Order is rendered by the Board.

The Jackson County Emergency Communication District expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order or the Board's Order incorporating the same.

This 05 day of Feb., 2004.

FOR JACKSON COUNTY EMERGENCY COMMUNICATIONS DISTRICT:


Ruth Warren, Chairman

APPROVED:

Lynn Questell
BPR No. 020358
General Counsel, Tennessee Emergency Communications Board
500 James Robertson Parkway
Nashville, Tennessee 37243-0569
(615) 253-2164

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER
511 UNION STREET, SUITE 2100
POST OFFICE BOX 198966
NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380

FAX: (615) 244-6804

www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS, LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE, SUITE 800
LOS ANGELES, CALIFORNIA 90071
(213) 362-3680

Shelby L. Sheffield

(615) 850-8826

ssheffield@wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS
A PROFESSIONAL LIMITED LIABILITY COMPANY
809 SOUTH MAIN STREET
POST OFFICE BOX 1035
COLUMBIA, TENNESSEE 38402-1035
(931) 388-8031

January 26, 2004

VIA FACSIMILE AND FIRST-CLASS MAIL

MEMBERS Of The TN EMERGENCY COMMUNICATIONS BOARD, Staff and
Other Interested Parties
500 James Robertson Parkway
Nashville, TN 37243

Re: Resolution of Jackson County Emergency Communications
Board

Dear Members of the Board, Staff and Other Interested Parties:

Following our emergency telephonic meeting on January 21, 2003, wherein the Jackson County Emergency Communications District ("ECD") requested that the Tennessee Emergency Communications Board ("TECB") (1) declare that the ECD is "financially distressed" within the meaning of Tenn. Code Ann. § 7-86-304(d) and (2) take such remedial action as may be necessary and appropriate, it was discovered that a potential appearance of impropriety might arise should I have continued participation in this matter. While I must emphasize that a direct conflict does not exist, in light of the TECB's adoption of Governor Bredesen's ethics policy during our January 15, 2004 Board meeting, I feel that it is imperative to avoid even the slightest appearance of impropriety. As such, I am recusing myself from signing the Consent Order in this Matter. Thank you in advance for your consideration of my decision.

Received by the

JAN 26 2004

TN Emergency
Communications Board

990858.1

Exhibit C

WALLER LANSDEN DORTCH & DAVIS
A PROFESSIONAL LIMITED LIABILITY COMPANY

January 26, 2004
Page 2

Sincerely,



Shelby L. Sheffield

SLS/

cc: James Weaver, Esq.
D. Billye Sanders, Esq.

Received by the

JAN 26 2004

TN Emergency
Communications Board

990558.1

** TOTAL PAGE.03 **